



# COMMONWEALTH of VIRGINIA

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## MEMORANDUM

**TO:** Karin Clark  
Virginia Department of Social Services

**FROM:** Jennifer C. Williamson  
Senior Assistant Attorney General

**DATE:** June 16, 2017

**SUBJECT:** Exempt Regulation Establishing Regulation for Applications for Public Assistance;  
22VAC40-294 (4823/7939)

I am in receipt of the attached regulations reflecting the changes in Virginia statutory law made by Chapters 106 and 472 of the *2017 Acts of the Assembly* regarding applicants for Medicaid and applicants for all public assistance. You have asked the Office of the Attorney General to review and determine if the State Board of Social Services ("State Board") has the statutory authority to promulgate the specified regulations and whether the specified regulations comport with applicable state law.

Pursuant to Va. Code § 63.2-217, the State Board is required to promulgate regulations as may be necessary or desirable to carry out the purposes of Va. Code § 63.2-500 *et seq.* Consequently, it is my opinion that the State Board has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act and Executive Orders 17 (2014) and 58 (1999), and the State Board has not exceeded that authority.

Based on the foregoing, it is my view that these regulations are exempt from the procedures of Article 2 of the APA pursuant to Virginia Code § 2.2-4006(A)(4)(a) provided the regulations are filed with the Registrar within 90 days of the law's effective date and the requirements of Virginia Code § 2.2-4006(B) are met.

If you have any questions, please feel free to call me at 225-3197.

Attachment

DEPARTMENT OF SOCIAL SERVICES

Establish Regulation for Public Assistance Applications

CHAPTER 294

APPLICATIONS FOR PUBLIC ASSISTANCE

**22VAC40-294-10. Notice of Advance Directives.**

The local department of social services or the Commissioner shall provide each Medicaid applicant with information on advance directives, including the purpose, benefits, and how to make an advance directive.

**22VAC40-294-20. Alternative Contact Information.**

The local department of social services shall collect from each applicant alternative contact information, such as the applicant's email address and cell phone number, and the applicant's preferred method of contact, including direct mail, email, text message, or cell phone.